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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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|-----------------|-------------|----------------------|---------------------|------------------|

09/476,490

12/30/1999

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01/22/2009

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EXAMINER

TYSON, MELANIE RUANO

ART UNIT

PAPER NUMBER

3773

MAIL DATE

DELIVERY MODE

01/22/2009

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/476,490
Filing Date: December 30, 1999
Appellant(s): MACHAN ET AL.

David L. Enfield
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 28 October 2008 appealing from the Office action mailed 05 September 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 3 and 12-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang (6,379,379). Wang discloses a stent graft comprising a stent (44) with grafts (46), wherein the grafts include a vessel wall irritant (col. 7, lines 5-21 and col. 8, lines 20-57) and the stent graft is a self-expandable or balloon expandable tubular member (col. 2, line 66 to col. 3, line 4).

Claims 4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang '379. Wang discloses all the limitations of the claims except fails to disclose a stent graft being a bifurcated stent graft and the wall irritant being selected from the groups as listed in claim 4. To modify or make a stent graft having a bifurcated configuration is well known in the art for treating bifurcated vessels in the cardiovascular system. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Wang's stent to have a bifurcated configuration in order to treat a bifurcated area in a vessel system.

Regarding claim 4, it would have been an obvious matter of design choice to use the bioadhesive material as claimed for Wang's stent graft since the appellant has not disclosed that using those specific materials solve any stated problem or are used for any particular purpose, and it appears that the invention would perform equally well with the bioadhesive materials disclosed by Wang.

(10) Response to Argument

The appellant argues that Wang fails to disclose a stent graft as claimed. The appellant states that a “graft” is a tubular structure that serves to transport fluid without flow or leakage of fluid through its walls. The appellant then argues that since Wang’s sleeve covers only the ends of the stent portion, Wang’s device cannot serve to transport fluid through its length and thus even with the broadest reasonable interpretation, Wang’s device is not structurally or functionally equivalent to a “stent graft.” However, Wang’s sleeve is solid, thus encompasses a graft function as described by the appellant (i.e., transports fluid without flow or leakage of fluid through its walls). It is the examiner’s position that the claims do not require the graft portion extend along the entire length of the stent portion, thus the stent graft as claimed is not required to transport fluid through its entire length as argued. Therefore, Wang, given the broadest reasonable interpretation, discloses a stent graft as claimed.

The appellant also argues that Wang fails to disclose a vessel wall irritant to induce or accelerate in vivo fibrotic reaction between the stent graft and tissue of the vessel, in that the final office action fails to provide any documentary evidence that Wang’s bioadhesive materials are vessel wall irritants. It is the examiner’s position that for example, cyanoacrylate, a bioadhesive material disclosed by Wang, is a vessel wall irritant as evidenced by the appellant’s own disclosure on page 4, lines 24-29. Therefore, Wang discloses a vessel wall irritant as claimed.

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The appellant finally argues that modifying Wang as recited in claims 4 and 11 do not overcome the deficiencies the appellant alleges above. It is the examiner's position that the appellant's arguments with respect to claims 4 and 11 are moot, since Wang discloses all the limitations as recited in independent claim 3.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Melanie Tyson/
Examiner, Art Unit 3773
January 14, 2009

Conferees:
/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773

/Thomas Barrett/
TQAS TC3700